IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9593 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ?YES

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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KANAM KELAVANI MANDAL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR UMANG OZA, AGP. for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 25/07/2007

ORAL JUDGMENT

1 Rule. Learned Assistant Government Pleader is directed to waive service on behalf of the respondents. By consent of the parties, the petition is taken up for final hearing and disposal today.

2 This petition under Article 226 of the Constitution primarily challenges order dated 15.05.2004 made by respondent No.3 - District Education Officer as confirmed by order dated 07.12.2006 made by respondent No.2 - Commissioner.

3 The facts in brief :

The petitioner is a Public Trust running a School at village Itola and entitled to Grant-in-Aid. In 2003 the post of Principal fell vacant. The petitioner approached the District Education Officer seeking permission to fill-up the said post and accordingly requisite No Objection Certificate was issued by the District Education Officer vide communication dated 18.06.2003. The petitioner published an advertisement on 27.06.2003. The interview was scheduled originally on 05.11.2003 but was changed to 06.11.2003. On the said date, viz. 06.11.2003 due to boycott call by the Association of Management of the Schools in the State of Gujarat the

interview could not take place. Subsequently the date for interview was fixed on 04.12.2003. It is the say of the petitioner that the representatives of the petitioner were present from 9.00 a.m. on 04.12.2003 but the representatives of Gujarat Secondary and Higher Secondary Education Board did not turn up and hence, the representatives of the petitioner left the venue of the interview. Subsequently, the interview was once again scheduled on 20.02.2004 but changed to 22.02.2004. It is the say of the petitioner that the representatives of the petitioner remained present on 22.02.2004 but neither the representatives of the Board were present nor was the District /home/bhatt/mca192307o1.sxwEducation Officer present. According to the petitioner the post of the Principal could not be filled up due to no fault on part of the petitioner. To complete the chain of events it is necessary to record that the post of Principal has since been filled up pursuant to interview held on 09.09.2004.

4 The District Education Officer issued show cause notice dated 05.03.2004 which was received by the petitioner on 09.03.2004. After considering the reply dated 17.03.2004 filed by the petitioner, vide order dated 15.05.2004 the

District Education Officer passed the impugned order directing 25% reduction in the grant available to the School run by the petitioner for Academic Year 2003-2004. The petitioner carried the matter in Appeal before the Commissioner who confirmed the order made by the District Education Officer vide order dated 07.12.2006.

5 The learned Advocate for the petitioner has reiterated the averments made in the petition and submitted that the District Education Officer has failed to consider the issue in proper perspective in as much as the power vested in the authority under Rule 95 of the Grant-in-Aid Code ('Code') cannot be made applicable to the facts of the present case. It was submitted that in the first instance the petitioner has not committed any of the alleged defaults of not attending on the dates when the interview was scheduled and the petitioner has wrongly been blamed for defaults which the petitioner has never committed. As against that, on behalf of the respondent authorities, the learned Assistant Government Pleader has submitted that the facts on record reveal that on each of the three occasions viz. 06.11.2003, 04.12.2003 and 22.02.2004, the petitioner having committed defaults by not remaining present, or leaving venue of the interview after coming, the

petitioner was liable to be penalised for such defaults. That the District Education Officer has in the circumstances, rightly directed reduction in the grant being paid to the School run by the petitioner.

6 Having heard the learned Advocates for the respective parties it is apparent that various averments have been made by both the sides on affidavits to establish which side is at fault for the interview not being conducted on any of the three dates on which the interview was scheduled, viz. 06.11.2003, 04.12.2003 and 22.02.2004. However, in light of the view that the Court is inclined to adopt it is not necessary to record any finding qua this controversy as the same is not necessary.

7 The respondent District Education Officer has initiated action by virtue of show cause notice dated 05.03.2004 (Annexure-M) under Rule 95 of the Code. It is therefore necessary to reproduce the same for ready reference :

> *"95. Reduction in Grant.*
> *Grants may be reduced by the District Education Officer to the extent of 25%, after due warning given to the management if he is satisfied that the provisions of the rules laid down in this Code are not duly maintained and the School has deteriorated in*

general efficiency. In case, however, of a breach of an instruction or order issued by the department or of an infringement of the provisions of a rule or rules in the Code, as well as in cases of gross mismanagement and deterioration in standards of efficiency and discipline, irregularity in maintenance of accounts, and such other defaults, the grant may be reduced or withdrawn by the Director of Primary Education without any previous warning."

8 It is stated by the learned Assistant Government Pleader at this juncture, under instructions of the District Education Officer who is present in the Court, that the Director in the aforesaid rule has since been redesignated as Commissioner, Mid-day-Meals and Schools.

9 On a plain reading of the aforesaid Rule it becomes apparent that the scope of powers vested in the District Education Officer is limited to the extent of reducing the grant upto the specified limit only in relation to defaults by the management in relation to any Rule of the Rules stated in the Code being violated, or in a case where the standard of the Schools has deteriorated. There is no other violation for which the District Education Officer can exercise powers under Rule 95 of the Code. All other powers are vested in the Commissioner as latter part of Rule 95 of the Code stipulates.

10 When one examines the impugned order dated 15.05.2004 made by the District Education Officer read with show cause notice dated 05.03.2004 it becomes apparent that the impugned order cannot be sustained for the reasons that follow :

11. Firstly, as can be seen from the show cause notice the District Education Officer has stated that the petitioner has disobeyed the instructions issued by the Office of District Education Officer from time to time thus resulting in the post of the School Principal remaining vacant. However, disregarding or disobedience of instructions is a default which falls within the exclusive domain of the Commissioner.

12. When one examines the impugned order dated 15.05.2004, in paragraph No.1 of the order, the District Education Officer records that the President of the petitioner-Trust invited attention to the aforesaid distinction between the powers available to the District Education Officer and the Commissioner but the District Education Officer has chosen to brush aside the same by referring to some Circular dated 15.09.1995 whereunder the District Education Officer is

empowered to impose reduction in grant to the extent of 25% while reiterating that the petitioner has disregarded various instructions issued by the office of the District Education Officer.

13. Paragraph Nos. 2, 3 and 4 of the impugned order merely reiterate as to how and in what circumstances interview was required to be scheduled on three different dates and who was at fault. In paragraph No.5 of the impugned order, the District Education Officer records that in light of Circular No.3/03 dated 07.10.2003 issued by Gujarat Secondary and Higher Secondary Education Board , Gandhinagar, Members of the Selection Committee cannot leave the venue of selection till the entire process of selection is completed. Therefore, the representatives of the petitioner have disregarded the said direction. In the operative part of the order one more reason is stated : that there is disobedience of the specified Rules and Regulations of the Government. Thus, an order has been made directing reduction in grant for the Academic Year 2003-2004 to the extent of 25%.

14 The Commissioner has confirmed the aforesaid order dated 15.05.2004 by only recording the submissions made by

both the sides without assigning any independent reason. The order of the Commissioner does not even reflect that the Commissioner was aware about the scope of powers available with the District Education Officer.

15 In the circumstances, it is apparent that the impugned orders made by the District Education Officer on 15.05.2004 as confirmed by the Commissioner on 11.09.2006/07.12.2006 cannot be sustained. The District Education Officer has admittedly acted in excess of jurisdiction vested in District Education Officer and exercised powers which have never been vested in the District Education Officer as can be seen from a plain reading of Rule 95 of the Code. In fact the District Education Officer has exercised powers which are specifically vested in the Commissioner, thus usurping the jurisdiction vested in the Commissioner; such an order cannot be sustained.

16 During the course of hearing, the learned Assistant Government Pleader referred to Rule 126 of the Code to submit that the remedy of approaching State Government against any order made under the Code is available and hence, the petition should not be entertained. It is true that

Rule 126 of the Code may provide for a remedy to approach the State Government. However, it is equally well settled that in a case where an authority has acted without jurisdiction it is not necessary to relegate a party to litigate and enter into a long drawn litigation resulting in harassment. As already recorded hereinbefore, the District Education Officer has no jurisdiction to make the impugned order dated 15.05.2004 considering the provisions of Rule 95 of the Code.

17 There is one more reason : reference to Circular dated 07.10.2003 cannot carry the case of respondent authority any further. On a plain reading it is apparent that the said Circular has been issued by the Board for consumption of the District Education Officers of all the districts explaining the duties that the District Education Officers are required to discharge in a case where selection camps have to be held for recruiting employees of registered Private Secondary Schools. The said circular is not a public circular and merely because the representatives of the petitioner Trust are part of the Selection Committee the said Circular cannot be made applicable so as to fasten the charge of violation of so called instructions stated in the circular. The respondent authority has not shown from the record that the said circular was made applicable to

the public at large and was available for being implemented by the public at large. On a reading of the circular it becomes apparent that these are instructions issued by the Board to the District Education Officers and cannot be termed to be a public circular. The District Education Officer cannot shift the burden of discharging the duty which is cast on the District Education Officer under the circular. Even otherwise reference to the said circular cannot permit the District Education Officer to extend the scope of powers vested in the District Education Officer under Rule 95 of the Code which is specific and unambiguous.

18 In the facts and circumstances of the case, the order dated 15.05.2004 made by the District Education Officer and confirmed by the Commissioner vide order dated 07.12.2006 are hereby quashed and set aside. The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A.Mehta, J.)

m.m.bhatt.